

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Finance and Tax Committee

BILL: CS/CS/SB 346

INTRODUCER: Finance and Tax Committee; Community Affairs Committee; and Senator Dean and others

SUBJECT: Working Waterfront Property

DATE: April 13, 2010

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	<b>Fav/CS</b>
2.	Fournier	McKee	FT	<b>Fav/CS</b>
3.			WPSC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- A. COMMITTEE SUBSTITUTE..... ☒ Statement of Substantial Changes
- B. AMENDMENTS..... ☐ Technical amendments were recommended
- ☐ Amendments were recommended
- ☐ Significant amendments were recommended

**I. Summary:**

CS/CS SB 346 implements section 4(j), Article VII, of the State Constitution, which provides for the classification of designated waterfront property as “working waterfront property”. The bill specifies that the assessed value of such classified property be based on current use and sets forth a methodology for calculating assessed value. The bill establishes mandatory application procedures for classification as a working waterfront property, and an appeals process for denial of classification. The bill also provides penalties for failure to notify the property appraiser of any changes in the use or ownership of the property.

According to the Revenue Estimating Conference, the fiscal impact of CS/SB 346 based on the current millage rates is as follows:

1

	FY 2010-11 Cash	FY 2010-11 Annualized	FY 2011-12 Cash	FY 2012-13 Cash	FY 2013-14 Cash
School Tax	0	\$17.3 m	\$ 17.5 m	\$ 18.3 m	\$ 19.2 m
Non-School Tax	0	\$22.5 m	\$22.7 m	\$23.6 m	\$24.9 m
Total Impact	0	\$39.8 m	\$40.2 m	\$41.9 m	\$44.1 m

The effective date of CS/CS/SB 346 is retroactive to January 1, 2010, so the annualized impact will also be the cash impact for FY 2010-11.

This bill creates section 193.704, and amends section 195.073, of the Florida Statutes.

## II. Present Situation:

### Assessment of Property

*Just Value* – Art. VII, section 4, of the State Constitution requires that all property be assessed at just value for ad valorem tax purposes. Under Florida law, “just valuation” is synonymous with “fair market value”, and is defined as what a willing buyer would pay a willing seller for the property in an arm’s length transaction.<sup>2</sup> Section 193.011, F.S., outlines the factors that property appraisers must consider to determine the just value of real property.

*Assessed Value* – The Florida Constitution authorizes certain alternatives to the just valuation standard for special classes of property.<sup>3</sup> Agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.<sup>4</sup> Livestock and tangible personal property that is held for sale as stock in trade may be assessed at a specified percentage of its value or totally exempt from taxation.<sup>5</sup> The “Save Our Homes” provision limits the amount a homestead’s assessed value can increase annually to the lesser of 3 % or the consumer price index.<sup>6</sup> Counties and municipalities may authorize historic properties to be assessed solely on the basis of character and use.<sup>7</sup> Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents that are 62 years of age or older.<sup>8</sup> The assessed value of nonhomestead residential property and nonresidential property may not increase by more than 10 percent over the previous year’s assessment unless there has been a change in ownership or control or, in the case of nonresidential property, a qualifying improvement has been made.<sup>9</sup>

<sup>1</sup> Revenue Estimating Conference, *Implementation of Working Waterfronts Constitutional Amendment, CS/SB 346, SB 1408, and HB 73*. (March 5, 2010)(on file with the Senate Committee on Community Affairs).

<sup>2</sup> Section 193.011, F.S. *See also* *Walter v. Shuler*, 176 So.2d 81 (Fla.1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla.1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So.2d 4 (Fla. 1973).

<sup>3</sup> The exceptions are implemented in Part II of ch. 193, F.S.

<sup>4</sup> Art. VII, section 4(a) of the State Constitution.

<sup>5</sup> Art. VII, section 4(c) of the State Constitution.

<sup>6</sup> Art. VII, section 4(d) of the State Constitution.

<sup>7</sup> Art. VII, section 4(e) of the State Constitution.

<sup>8</sup> Art. VII, section 4(f) of the State Constitution.

<sup>9</sup> Art. VII, sections 4(g), (h) of the State Constitution.

*Taxable Value* – The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.<sup>10</sup>

### **Working Waterfronts Constitutional Amendment**

In November 2008, Florida voters approved a constitutional amendment proposed by the Florida Tax and Budget Reform Commission (TBRC),<sup>11</sup> to provide for the assessment of working waterfront property based on current use.<sup>12</sup> The amendment to section (4), Art. VII, of the State Constitution, created a new subsection (j) to provide the categories of working waterfront property for which assessment is to be based on current use. The categories are:

- Land used predominantly for commercial fishing purposes.
- Land that is accessible to the public and used for vessel launches into waters that are navigable.
- Marinas and drystacks that are open to the public.
- Water-dependent marine manufacturing facilities, commercial fishing facilities, and marine vessel construction and repair facilities and their support activities.<sup>13</sup>

The assessment benefit provided in the amendment is subject to conditions, limitations and reasonable definitions as specified by the Legislature through general law. However, the Legislature appears to be without authority to apply the assessment benefit to properties that are not described in the Constitution.<sup>14</sup>

### **Economic Conditions Affecting Working Waterfront Properties**

According to the 2008 TBRC staff analysis:

Changes in Florida's economy and land use may be affecting the economic viability of commercial fishing and recreational working waterfronts.

Increasingly, development interests are buying traditional working waterfronts and converting the property to private and residential use.

“Water-enhanced” and “water-related” activities are replacing traditional or “water-dependent” activities. This has had the effect of both decreasing the availability of waterfront property necessary to sustain commercial fishing

<sup>10</sup> Art. VII, sections 3 and 6 of the State Constitution. *See also* ch.196, F.S.

<sup>11</sup> The Florida Tax and Budget Reform Commission (TBRC) was created in 1988 when voters approved an amendment to the State Constitution to transfer the authority to review state and local taxation and budget issues from the Constitution Revision Commission to the TBRC. The TBRC is established every ten years with 11 members appointed by the Governor, none of whom may be a legislator at the time of appointment. The Commission is composed of seven members appointed by the Speaker of the House of Representatives, seven members appointed by the President of the Senate, and four non-voting, ex officio members all of whom must be state legislators at the time of appointment and must meet additional requirements. The 2007-2008 TBRC adopted the working waterfronts proposal as a CS for CP's 6, 8, & 34, Second Engrossed, and the proposal was Revision 6 on the ballot of the 2008 General Election.

<sup>12</sup> This amendment was approved by 71 percent of Florida electors voting on the issue.

<sup>13</sup> Art. VII, Section 4(j) of the State Constitution.

<sup>14</sup> Statutes providing for an exemption from ad valorem tax are to be strictly construed, and any ambiguity is to be resolved against the taxpayer and against exemption. *See Capital City Country Club v. Tucker*, 613 So.2d 448 (Fla.1993) (“... [I]t is well settled that all property is subject to taxation unless expressly exempt, and exemptions are strictly construed against the party claiming them.”).

and recreational boating activities, and increasing the value of nearby working waterfront property. This increase in property value results in higher property taxes, which may cause the working waterfronts to be [less] profitable, thereby compounding the pressure to convert [the property to a higher-valued use.]<sup>15</sup>

### **Recreational and Commercial Working Waterfronts**

Section 342.07, F.S., establishes the Legislature's recognition that there is an important state interest in maintaining water-dependent commercial activities and public access to the navigable waters of the state. These water-dependent support activities include those that are open to the public, such as: docks, wharves, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities, and other support structures over the water.<sup>16</sup>

The "Waterfronts Florida Program" in s. 342.201, F.S., is governed by the Department of Community Affairs and designed to provide technical assistance, support, training, and financial assistance for waterfront communities to revitalize waterfront areas in the state. Section 342.201(3), F.S., requires the program to focus on the following priority concerns:

- Protecting environmental and cultural resources;
- Providing public access;
- Mitigating hazards; and
- Enhancing the viable traditional economy.<sup>17</sup>

New communities can undergo a competitive application process to be designated as "Waterfront Florida Partnership Communities" under the program and receive limited financial assistance from the department to develop a community-designed vision for revitalizing the designated waterfront area.<sup>18</sup>

Section 197.304, F.S., also allows counties and cities to grant tax deferrals for recreational and commercial working waterfront property under certain statutory conditions.

### **III. Effect of Proposed Changes:**

**Section 1** creates s. 193.704, F.S. Subsection (1) of this section provides the following definitions for the purpose of classifying working waterfront property for value assessment: "accessible to the public," "commercial fishing operation," "drystack," "land used predominantly for commercial fishing purposes," "marina," "marine manufacturing facility," "marine vessel construction," "open to the public," "repair," "support facility," "water-dependent,"

<sup>15</sup> Taxation and Budget Reform Commission (TBRC), *Staff analysis Amendment 6* (March 26, 2008) (on file with the Senate Committee on Community Affairs).

<sup>16</sup> Section 342.07(2), F.S.

<sup>17</sup> Section 342.201(3), F.S.

<sup>18</sup> "The Program generally designates communities every two years"... so far 23 communities have been selected for the Waterfronts Florida Program since it started in 1997, including the recently designated communities of Fort Myers and Millville-Bay County. See Press Release, *Two Communities Selected for Waterfronts Florida Program* (July 6, 2009) (on file with the Senate Committee on Community Affairs).

“waterfront,” and “waters that are navigable” for purposes of classifying working waterfront property for assessment purposes.

Subsection (2) provides that pursuant to s. 4(j), Art. VII, State Constitution, and effective January 1, 2011, the following waterfront property is eligible for classification as working waterfront property:

- Land used predominantly for commercial fishing purposes.
- Land that is accessible to the public and used for vessel launches into waters that are navigable.
- Marinas and drystacks that are open to the public.
- Water-dependent commercial fishing facilities.
- Water-dependent marine vessel construction and repair facilities and their support activities.

This list mirrors the constitutional language.

Subsection (2) mandates that working waterfront property be assessed based on the current use of the property. It provides the following methodology to calculate the current use value of the property:

- If appropriate to the property, the assessed value shall be calculated using the income approach to value, using an overall capitalization rate based upon the debt coverage ratio formula, adjusted for the effective tax rate.
- The capitalization rate must be based on local data and calculated and updated annually.
- If the conditions required for assessment by the income approach, the bill directs the property appraiser to value the property at its current cast value as if it were required to remain in its current use into the foreseeable future.
- The assessed value of the property may not exceed its just value.

Subsection (2) also creates an application process for classification as working waterfront property:

- Applications for classification must be filed with the property appraiser by March 1 of each year. After the initial application is approved, reapplication may be made on a short form provided by the Department of Revenue.
  - Late applications may be approved by the property appraiser if the property owner establishes extenuating circumstances prevented timely filing of an application.
  - A county may, by majority vote of the governing body, waive the requirement for annual renewal of the classification as working waterfront property.
- A new application for classification must be filed each time the property is sold or otherwise disposed of, any time ownership changes, or if the use of the property is abandoned or discontinued.
  - If the use of the property as working waterfront property is abandoned or discontinued, then the property appraiser shall remove the classification and assess the property at just value pursuant to s. 193.011, F.S.
- The property owner has the responsibility of notifying the property appraiser when the use or ownership of the property changes.
  - If a property owner fails to notify the property appraiser and the property appraiser determines that the classification was improperly granted for any year

- within the prior ten-year period, the property owner is subject to taxes otherwise due and owing, plus 15 percent interest per year, and a 50 percent penalty of the additional taxes owed.
- The property appraiser must record a tax lien against real property owned by a property owner who fails to notify the property appraiser when the use or ownership of the classified property changes.
    - If the property owner no longer owns property in the county in which the improperly classified working waterfront property is located, the tax lien must be recorded against other properties owned by the property owner in other counties of the state.
  - In situations where only a portion of a parcel receives a “working waterfront” classification, the portion of the property not eligible for classification must be assessed as otherwise provided in ch. 193, F.S.
  - The property appraiser must list all applications for classification of working waterfront property, showing:
    - the acreage, the just value under s. 193.011, F.S., the value of the land under the provisions of this subsection, and whether or not the classification was granted.

Subsection (3) provides an appeals process for denial of a working waterfront classification:

- The property appraiser must provide the property owner with a written notice denying the classification application on or before July 1 of the year the application was filed. The notice must advise the property owner of the right to appeal the denial to the value adjustment board.
- After a property owner is denied classification, he or she may file a petition with the value adjustment board requesting that classification be granted and pay a nonrefundable \$15 filing fee.
  - The petition may be granted if the petitioner establishes that the property is qualified to receive the classification and demonstrates particular extenuating circumstances.
  - Denial of a petition may be appealed to a court of competent jurisdiction.
- Property granted working waterfront classification is entitled to retain such classification in any subsequent year until the use of the property is changed, abandoned or discontinued, or the ownership of the property changes in any way.
  - No later than January 31 of each year, the property appraiser must notify the property owner or lessee receiving classification that he or she must certify each year to the property appraiser that the ownership and use of the property has not changed. The form of notification shall be prescribed by the Department of Revenue by rule.
  - If a county has voted to waive the notice and requirement for annual application of the classification, the county may also waive the annual certification requirement provided in this section.

**Section 2** amends s. 195.073, F.S., to add “working waterfront property” to the list of property classifications used for tax assessment purposes.

**Section 3** authorizes the Department of Revenue to adopt emergency rules to administer s. 193.704, F.S.

**Section 4** provides that the bill shall take effect on upon becoming a law, and shall apply retroactively to January 1, 2010 .

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

This bill implements s. 4(j), Article VII, of the State Constitution, which requires certain specified working waterfront properties to be assessed based upon the current use of the property and authorizes the Legislature to provide conditions and limitations and reasonable definitions. This bill does not create the requirement that working waterfront property be assessed at its current use; rather it provides conditions, limitations and reasonable definitions to govern that assessment. Any reduction in the authority of counties and municipalities to raise revenues in the aggregate is a result of the constitutional provision instead of this bill, and therefore the bill does not fall under the mandate provisions of s. 18, Art. VII, State Constitution.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

##### **B. According to the Revenue Estimating Conference, the fiscal impact of CS/SB 346 based on the current millage rates is as follows:**

	FY 2010-11 Cash	FY 2010-11 Annualized	FY 2011-12 Cash	FY 2012-13 Cash	FY 2013-14 Cash
School Tax	0	\$17.3 m	\$ 17.5 m	\$ 18.3 m	\$ 19.2 m
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Total Impact	0	\$39.8 m	\$40.2 m	\$41.9 m	\$44.1 m

##### **C. The effective date of CS/CS/SB 346 is retroactive to January 1, 2010, so the annualized impact will also be the cash impact for FY 2010-11.**

##### **D. Private Sector Impact:**

To the extent that specified property is eligible for classification as working waterfront property and the assessment of ad valorem taxes will be based on current use, the owners of such property may see a reduction in their ad valorem tax bills.

**E. Government Sector Impact:**

Local governments, including school districts, will experience a reduction in ad valorem tax revenues from properties classified as working waterfront properties. The Revenue Estimating Conference's estimate of this reduction is shown under Tax/Fee Issues, above.

The Department of Revenue is required to prescribe by rule the form of notice the property appraisers will use for the owner to annually certify that the ownership and use of property classified as working waterfront property has not changed, and will need to promulgate a uniform application for classification of such property to be used statewide. The Department of Revenue must also develop a short form by rule for owners to reapply each year for classification as working waterfront property.

Since the value of these properties will no longer be determined using the traditional method of comparing sales data, the Department of Revenue states that it will need to create three new Senior Appraiser positions for highly trained and specialized property appraisers. The department estimates that each Senior Appraiser position will cost \$2,500 for training and certification.<sup>19</sup>

The Department of Revenue estimates that this bill will require \$204,343 in recurring expenditures and \$10,164 in non-recurring expenses for the FY 2009-10.<sup>20</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Finance and Tax Committee on April 13, 2010:**

This committee substitute includes:

- A minor change in the definition of “land used predominantly for commercial fishing purposes”, striking the word “venture”;
- A minor definition change in the definition of “marina”, striking the word “secured”;
- A change in the definition of “water dependent”, clarifying that it is the activities performed at a facility that must be conducted only on, in, or adjacent to waters

<sup>19</sup> Department of Revenue, *Senate Bill 346 Fiscal Analysis* (January 8, 2010) (on file with the Senate Committee on Community Affairs).

<sup>20</sup> *Id.*



that are navigable, require direct access to water, and involve the use of water as an integral part of the activity;

- A change in the definition of “waters that are navigable”, emphasizing that it means water bodies that are capable of supporting boating;
- Assessment methodology language that provides a formula based on local data and an overall capitalization rate based on the debt coverage ratio formula, to be used if data are available and the income approach to value is appropriate to the property. If it is not appropriate or local data are not available, the property appraiser must value the property at its present cash value as if it were required to remain in its current use into the foreseeable future;
- Clarification of the assessment of mixed-use parcels, providing that uses not eligible for working waterfront classification will be assessed as they would otherwise be assessed in the absence of the working waterfront uses;
- Emergency rulemaking authority for the Department of Revenue;
- An effective date is upon becoming a law applying retroactively to January 1, 2010. For 2010, the deadline for applying for working waterfront classification is July 1, instead of March 1.

**CS by Community Affairs Committee on February 16, 2010:**

The CS revises certain definitions to:

- Remove the provision “with no automatic renewal rights or conditions” in the definition of “drystack”.
- Remove the provision “with no automatic renewal rights or conditions” when referencing drystack for vessels in the definition of “marina”.
- Provide for aquaculture operation as certified under ch. 597, F.S., in the definitions of “commercial fishing facility” and “land used predominantly for commercial fishing purposes”.
- Provide a new definition for “waters that are navigable” to read
  - “Waters that provide access to vessels for the transportation of people and goods in commerce.”

**B. Amendments:**

None.